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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------|------------------|
| 09/978,127   | 10/16/2001  | Steven Curtis Zicker | IR 6493-02                 | 3786             |
| 23909 7590 02/12/2007<br>COLGATE-PALMOLIVE COMPANY<br>909 RIVER ROAD<br>PISCATAWAY, NJ 08855 |             |                      | EXAMINER<br>VAKILI, ZOHREH |                  |
|  |             |                      | ART UNIT                   | PAPER NUMBER     |
|  |             |                      | 1614                       |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE   |             | MAIL DATE            | DELIVERY MODE              |                  |
| 3 MONTHS   |             | 02/12/2007           | PAPER                      |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



### **DETAILED ACTION**

Claims 39 and 44-47 are presented for examination.

#### ***Status of the Case***

The examiner for the instant application has changed. The current examiner assigned to this application is Zohreh Vakili.

The Terminal Disclaimer filed January 23, 2006, has been received and entered into the application.

The Amendments and Remarks, filed October 6, 2005, have been received and entered into the application. Accordingly, claim 39 has been amended.

Claims 39 and 44-47, as filed October 6, 2005, are presented for examination.

Applicant's arguments, filed October 6, 2005, have been fully considered but they are not deemed to be persuasive. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

#### ***Maintained Claim Rejections - 35 USC § 103***

The rejection of claims 39 and 44-47 under 35 U.S.C. 103(a) over Harper WO 00/44375 in view of Hamilton (U.S. Patent No. 6,335,361 B1) has been maintained for the reasons stated in the prior Office Action June 16, 2005 and further in view of the following remarks.

### ***Response to Arguments***

Applicant argues that Harper discloses using vitamin E and vitamin C for treating oxidative stress in a cat/dog and to treat a disorder associated with oxidative stress.

Applicant further argues that though they are both antioxidants, they each have more than one mechanism of action and Harper does not teach their use for affecting learning ability in aged pets.

Harper discloses using vitamin E and vitamin C to overcome the problem of oxidative stress in a cat and dog and to prevent or treat a disorder affected by oxidative stress. Disorders such as ageing and neurodegenerative disease are caused by oxidative stress (see page 13, lines 6-14) and are treatable using the disclosed composition of Harper. As Applicant has mentioned, vitamin C and vitamin E are antioxidants that have several mechanisms of action. Applicant argues that the present invention differs from Harper because Harper does not teach that vitamin C and vitamin E affect learning in aged pets. However, one of the actions of vitamin C and E is to prevent or treat ageing in pets as taught by Harper due to its antioxidative action. Harper teaches a treatment for ageing which is associated with oxidative stress and the loss of learning ability is a cognitive deficit which occurs with ageing.

Applicant asserts that Hamilton teaches using carnitine and lipoic acid to discourage age-related memory loss and provide improved memory, and further asserts that Hamilton does not teach the claimed objective of inhibiting the loss of learning ability or increasing learning ability.

Hamilton discloses a method of treating cognition disorders associated with ageing and to improve memory in older pets. Specifically, the method involves administering an effective amount of a combination of the antioxidants carnitine and alpha lipoic acid. A preferred form of carnitine is acetyl-L-carnitine and R-alpha-lipoic acid. The combination of anti-oxidants may be added to pet food for administration to animals such as cats or dogs. Hamilton even discloses that the combination of anti-oxidants contributes to the improvement of mental acuity and inhibits age-related memory loss and provides improved memory in older subjects. Finally, Hamilton discloses that additional nutrients such as Vitamin E or C should be included as they are particularly important in older subjects (please see col.6, lines 44-60; col. 7, lines 14-17; col. 8, lines 8-13; col. 10, lines 9-21). While memory and learning are distinct mental functions, at the same time they are related and function hand in hand. With no memory there will be no retention of the learning. Therefore, whatever learned can be easily forgotten with lack of memory and, therefore, improved memory provides an increase in learning ability. Applicant's claimed method steps are obvious in view of the prior art. The Hamilton reference renders the claimed invention obvious and the rejection is respectfully maintained.

Applicant has not provided any reasoning or evidence as to why the combined antioxidative effect for the treatment of aging in the aged pets would not have necessarily resulted from the combination of Harper and Hamilton. Administration of the same products, for example, vitamin E, vitamin C, lipoic acid and carnitine, to an

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identical host (i.e. an aged pet) would have the same effect on learning as that claimed because products of identical compounds cannot have mutually exclusive properties.

Applicant argues that the Examiner has reached this conclusion only through the impermissible use of hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136 (a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 9am to 6:00pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner  
Zohreh Vakili  
Art Unit 1614

January 29, 2007

*Ardin H. Marschel 2/4/07*  
**ARDIN H. MARSCHEL**  
**SUPERVISORY PATENT EXAMINER**

*UAR 29 JAN 07*